

MITIGATION CREDIT PURCHASE AND DEPOSIT AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND DEPOSIT AGREEMENT (hereinafter "Agreement") is made this ____ day of _____, 2011, by and between **Green Swamp Mitigation Bank, LLC** (hereinafter "Seller"), whose mailing address is P.O. Box 540285 Orlando, Florida 32854 and **Sumter County Board of County Commissioners**, (hereinafter "Buyer") whose mailing address is 319 East Anderson Avenue Bushnell, Florida 33513 (hereinafter collectively the "Parties").

WITNESSETH:

WHEREAS, the Seller maintains an ecological restoration project located in Polk County, Florida (hereinafter referred to as the "Mitigation Property");

WHEREAS, Seller owns mitigation bank with freshwater forested mitigation credits (hereinafter "Credits") available for transfer and sale under South West Florida Water Management District (hereinafter "SWFWMD") Permit No. 43034641.000 and the U.S. Army Corps of Engineers (hereinafter "USACOE") Permit No. TBD;

WHEREAS, as part of the environmental permitting process involving the SWFWMD and USACOE, it is anticipated that Buyer's permit from the aforementioned respective governmental agencies will be conditioned upon purchase of Credits as compensatory mitigation;

WHEREAS, Seller agrees to sell and Buyer agrees to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of project known as **CR 468** (hereinafter "Project") SWFWMD Application No. TBD and USACOE Application No. TBD;

WHEREAS, the number of Credits to be purchased by Buyer has been determined by Buyer after consultation with its advisors to be one and twenty-five hundredths (1.25) freshwater forested credits; and

WHEREAS, Seller requires as part of this Agreement for Buyer to remit this Agreement and funds to Seller via Mitigation Marketing in order to allow Seller to submit a minor permit modification (hereinafter "Minor Permit Modification") for a debit of UMAM Credits from the SWFWMD so that the aforesaid respective Credits can be transferred to the Buyer.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. **Terms of Purchase**. The purchase price (hereinafter "Purchase Price") of the Credits is One Hundred Eighty Seven Thousand and Five Hundred Dollars U.S. (\$187,500.00) payable in check, wired federal funds or cashier's check. Seller agrees to reserve and sell to the Buyer the aforementioned Credits under this Agreement as may be required by the SWFWMD and USACOE. All payments shall be paid to the account of **Green Swamp Mitigation Bank** and submitted via Mitigation Marketing P.O. Box 540285 Orlando, Florida 32854. The payment shall be paid on or before November 29, 2011 or within 10 days of the SWFWMD and USACOE permit being issued, whichever occurs first.

Purchase price is based on the price of one hundred and fifty thousand dollars (\$150,000.00) per UMAM credit. The purchase price will be adjusted up or down by the actual number of credits required by SWFWMD for this project.

If full payment is not received by November 29, 2011, purchase price is subject to market value which is \$180,000.00 per UMAM Credit.

2. **Reservation Period**. This reservation shall commence upon the signing of this Agreement and expire on November 29, 2011. No extensions are available without an addendum executed by both the Seller and Buyer.
3. **Adjustment of Credit Reservation**. The Seller agrees to reduce the number of credits reserved if the regulatory agency requirement is decreased at no penalty to the Buyer. The Seller also agrees to increase the number of credits reserved, if available. The Deposit(s) in either a decreased need or an increased need will be applied to the final purchase price. In the case of a credit reservation adjustment within the reservation period identified above, an addendum to this agreement will be executed by both the Seller and Buyer.
4. **Covenants of Seller**. Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's permits from the SWFWMD and USACOE for the Mitigation Property. Responsibility for compliance with the Seller's permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. The provisions of this paragraph 2 shall survive the closing hereunder.
5. **Conditions of Transfer of Credit**. Upon payment of the total Purchase Price and receipt of buyers permits, Seller shall provide to Agencies within ten (10) days thereafter documentation as required by the SWFWMD and USACOE to effectuate the transfer of Credits as per the conditions of the Buyer's permit (i.e. copy of signed minor permit modification request) for the Project. Buyer is hereby notified that the transfer of Credits generally takes approximately thirty (30) to sixty (60) days to complete.

6. **Deposit.** Unless otherwise described herein or otherwise agreed, the Deposit shall be credited against the Purchase Price paid by Buyer for the Credits. The Deposit shall be deposited into a deposit account. Said Deposit shall be non-refundable to Buyer except in the case of breach by Seller as set forth in Paragraph 9 below.
7. **Debit of Credits and Transfer.** Upon notification of the debit of the Credits by the SWFWMD, the same shall be transferred to Buyer together with document(s) evidencing such transfer of Credits. The Parties hereby agree that evidence of the Credits being transferred shall be the receipt by Seller from the SWFWMD and USACOE of the Permit being issued for the project. Once transfer has been completed, it is acknowledged that seller's payment is fully earned.
8. **Release of Deposit** Upon receipt by Seller of above evidence acknowledging the transfer of mitigation credits and obligations to buyer, it is acknowledged the release of funds paid to Seller for this Agreement is authorized.
9. **Breach of Seller.** If, for any reason, the Credits have not been conveyed to Buyer due to breach by Seller of the Agreement, then the Seller shall disburse the deposit to the buyer upon written notice of said breach. Notwithstanding the foregoing, Seller shall have twenty (20) days to remedy said breach; and if not cured the Seller shall refund deposit to Buyer.
10. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
11. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.
12. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: Green Swamp Mitigation Bank, LLC
P.O. Box 540285
Orlando, Florida 32854

With a copy to: Mitigation Marketing, LLC
Attn: Victoria Colangelo
P.O. Box 540285 *USPS*
Orlando, Florida 32854
1005 Edgewater Drive *Physical*

Orlando, Florida 32804
(407) 481-0677 phone
(407) 648-3866 fax
Victoria@mitigationmarketing.com

Notices to Buyer shall be sent to: Sumter County Board of County Commissioners
Attn: Chris Wert, Public Works Division
319 East Anderson Avenue
Bushnell, Florida 33513
(352) 793-0240
Chris.Wert@SumterCountyFl.gov

With a copy to: Springstead Engineering, Inc.
Attn: David Springstead, P.E.
727 South 14th Street
Leesburg, Florida 34748
(352) 797-1414 phone
David@Springsteadeng.net

Modica & Associates
Attn: Elaine Imbruglia
302 Mohawk Road
Clermont, Florida 34715
(352) 394-2000 phone
(352) 394-1159
eca@modica.cc

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. All Parties agree that any notice may be faxed to any of the above Parties or their attorneys. Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

13. **Entire Agreement.** This Agreement contains the entire understanding between the

Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.

14. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
15. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither party shall hold itself out as an agent, partner or joint venturer with the other and each party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this paragraph.
16. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
17. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
18. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
19. **Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement.
20. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten

provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.
22. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
23. **Agreement Not Recordable.** This Agreement shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said party in default hereof.

**SIGNATURE PAGES FOR MITIGATION CREDIT PURCHASE AND ESCROW
AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

Signed, sealed and delivered in the presence of:

SELLER:
GREEN SWAMP MITIGATION BANK
By:
A Florida Corporation, General Partner

Witness Signature

By: _____
Dennis K. Benbow, Managing Member

Witness Name

Executed on _____, 2011

BUYER:

**SUMTER COUNTY BOARD OF COUNTY
COMMISSIONERS**

Witness Signature

By: _____
Don Burgess, Chairman

Witness Name

Executed on _____, 2011